

MAY 29 1981

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In The Matter Of The Arbitration Between:

GATEWAY VOCATIONAL, TECHNICAL & ADULT
EDUCATION DISTRICT,

-and-

Decision No. 18107-A

SERVICE EMPLOYEES, SEIU, LOCAL 168, AFL-CIO

Appearances: Bruce E. Schroeder, Attorney at Law, for the Union
Kenneth P. Niemeyer, Coordinator of Personal Services, for the
Employer

Services Employees, SEIU, Local 168, AFL-CIO, hereinafter referred to as the Union, is the exclusive collective bargaining representative of all custodial employees employed by Gateway Vocational, Technical and Adult Education District, hereinafter referred to as the Employer. The Union and the Employer have been parties to a collective bargaining agreement covering wages, hours and conditions of employment that expired on June 30, 1980. On March 5, 1980, the parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement. Subsequent to that the parties met on three occasions in an effort to reach an accord on a new collective bargaining agreement. On May 7, 1980, the Employer filed a petition requesting the Wisconsin Employment Relations Commission to initiate Mediation-Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. On June 23, and September 22, a member of the Commission's staff conducted an investigation that reflected that the parties were deadlocked in their negotiations. On September 22, 1980, the parties submitted their final offers and the investigator notified the parties that the investigation was closed. The final offer of the Union is attached hereto as addendum "A" and the Employer's final offer is attached hereto as addendum "B".

Subsequently the investigator advised the Wisconsin Employment Relations Commission that the parties remained at impasse. The commission certified that the conditions precedent to the initiation of mediation arbitration as required by Section 111.70(4)(cm)6 of the Municipal Employment Relations Act had been met and it issued an order appointing the undersigned as the Mediator/Arbitrator. A mediation session was held at Kenosha, Wisconsin, on January 13, 1981. Agreement was reached on all of the issues between the parties except the proposal of the Union that any member of the bargaining unit who retired under the provision of the Wisconsin Retirement Act or the designated beneficiary of any working member who dies would receive an amount calculated by multiplying the employees accumulated sick leave by his final daily rate of pay and dividing the sum thereof by two. The proposal also provided that a retiring employee could decline immediate payment of this sum upon retirement and have it set aside for use in the purchase of group health insurance coverage and that any employee exercising such option who died before the entire amount due him was so utilized would have the balance paid to his designated beneficiary. The parties stipulated before the Arbitrator that the Union could amend its final offer to include that proposal only and the Employer would amend its final offer to oppose the inclusion of that proposal in the collective bargaining agreement. At that stage of the proceedings, the undersigned determined that there was no possibility of agreement by the parties and the arbitration phase of the proceedings was conducted on February 10, 1981 at Kenosha, Wisconsin.

Five governmental Employers in Kenosha County provide the same, equivalent or superior coverage to the Union's proposal. The University of Wisconsin-Parkside provides that at the time of retirement or in the event of death, accumulated unused sick leave shall be converted at current value and credited to the employees account. The conversion credits shall be used on behalf of the

employee or surviving spouse, children or other dependents to offset the cost of monthly health insurance premiums. Kenosha County provides employees with compensated serious absences and an additional five casual days per year which the employee may use in his discretion. In the event that the employee does not utilize these days for absence purposes, he is paid for them at the full daily rate at the end of the calendar year. The City of Kenosha provides that any member of the bargaining unit who retires from city employment under the provisions of the Wisconsin Retirement Fund or the Estate of any member of the bargaining unit who dies shall receive a severance pay equal to 50 per cent of his accumulated sick leave at his final daily rate of pay. The Kenosha Unified School District gives employees who retire under the provisions of the Wisconsin Retirement Act or the designated beneficiary of any working member who dies an amount calculated by multiplying the employee's accumulated sick leave by his final daily rate of pay and dividing the sum thereof by two. The retiring employee may at his option decline payment of the sum upon retirement and have it set aside for use in the purchase of group health insurance coverage and should any employee exercising this option die before the entire balance due him is so utilized, the balance is paid to his designated beneficiary. The Kenosha Library gives one-half of accumulated sick leave to all maintenance personnel with ten years or more of service when they leave the employee of the library. The employees of the Kenosha Unified School District had a provision giving them the accumulated sick leave upon death or retirement included in their collective bargaining agreement as the result of an arbitration award arising out of the negotiations for a collective bargaining agreement covering the period from July 1, 1978 to June 30, 1980. The award was issued by Arbitrator Edward Maslanka on July 27, 1979. Maslanka selected the Union's last offer, and in his discussion of that particular issue he looked upon it very favorably.

The collective bargaining agreement between the Union and the Employer have usually included economic benefits that were comparable to those provided by the Kenosha Unified School District to its custodial employees who incidentally are represented by the Union. In 1971 Kenosha Unified School District reached an agreement with the Union giving employees a full holiday on Christmas Eve and New Year's Eve in place of a half holiday. The agreement also increased the vacation for employees with seniority of one through nine years from twelve days to fourteen days and increased the amount of sick leave that could be accumulated from 110 days to 120 days. A new pay schedule was also agreed upon. Shortly after the completion of the negotiations between the Union and Kenosha Unified School District the Employer reached agreement with the Union that provided its custodial employees with the same changes in holidays, vacations, accumulation of sick leave and a comparable pay schedule. In 1973 the Kenosha Unified School District and the Union reached an agreement changing Good Friday from a half holiday to a full holiday and the Employer agreed to pay the one-half per cent contribution to the retirement fund that had formerly been paid by the employees. The agreement also provided a new pay schedule. Shortly after that agreement was reached the Union and the Employer reached an agreement with the very same new provisions for the Employer's custodial employees. In 1975 the major issue between the Kenosha Unified School District and the Union was a new pay schedule. Immediately after they reached an agreement on a pay schedule the Employer agreed to provide the same pay schedule to its custodial employees. In 1978 the Kenosha Unified School District and the Union were unable to resolve their collective bargaining agreement and it was submitted to arbitration. The Employer and the Union reached agreement at the bargaining table. The award of the arbitrator provided the custodial employees of the Kenosha Unified School District with different benefits from those agreed upon between the Union and the Employer.

The Employer operates facilities at Racine, Kenosha, Kenosha Airport, and Elkhorn. Members of the bargaining unit are employed at each facility. The Employer is one of sixteen vocational, technical and adult education districts that comprise the Wisconsin system. It has three bargaining units covering

clerical personnel, teacher personnel, and the custodial employees. The technical employees, the project employees and administrative employees are not covered by collective bargaining agreements. The Employer does not pay out accumulated sick leave upon retirement or death to the teacher unit or the clerical unit or any of the unrepresented groups. There are nine public education Employers within the three counties in which the Employer has facilities. Seven of those Employers do not provide a cash pay out for accumulated sick leave upon retirement or death. However, two of those seven do provide that accumulated sick leave can be used to offset the cost of monthly health insurance premiums for employees who are retired. The Burlington School District and the Kenosha Unified School District both provide for cash pay outs of accumulated sick leave. The Burlington School District provides one-fourth of the accumulated sick leave for pre-retirement severance and full sick leave at retirement or death. The Kenosha Unified School District provides a cash pay out at retirement or death comparable to that requested by the Union. Thirteen of the fifteen Wisconsin vocational, technical and adult education districts do not provide a cash pay out or accumulated sick leave upon retirement or death to custodial or maintenance employees. The Madison District permits employees to receive the equivalent value of three-fourths of the unused sick leave to continue medical insurance after retirement until the sum is exhausted and the Western Wisconsin District permits custodial employees to receive the equivalent value of one-half of unused sick leave to continue medical insurance premiums after retirement until age 70. The Milwaukee District makes a cash pay out for accumulated sick leave up to a maximum of thirty days at the time of retirement or death. The Waukesha District provides that employees who have been employed for a minimum of fifteen years and who retire, resign or die will be paid sixty per cent of their salary rate for accrued sick leave. The per cent of the accrued days ranges from 25 to 55 per cent for employees who retire or die depending on the number of years they have been employed and the per cent of accrued days to be paid for those who resign ranges from 10 to 25 per cent depending upon the number of years of service. The Employer points to an arbitration award involving it and its teachers that was issued by Arbitrator Frank Ziedler on January 15, 1980. Ziedler found the Vocational, Technical and Adult Education Districts most comparable to the Employer to be Waukesha and Fox Valley. Moraine Park, Northeast and Blackhawk were also found to be comparable. The Employer points out that of those five Vocational, Technical and Adult Education Districts, only Waukesha provides its custodial employees with a cash pay out of accumulated sick leave. There are five noneducational public employers in the three county area served by the Employer that employ custodial personnel. Of those five employers, four provide a pay out of accumulated sick leave at death or retirement. The bargaining units of those employers include personnel in classifications other than custodial and constitute a somewhat different group of people than those custodial employees of the Employer represented by the Union.

There are some differences in the collective bargaining agreement between the Kenosha Unified School District and the Union and the one between the Employer and the Union. The recognition clause in the Kenosha Unified School District covers custodial employees, utility workers, mechanics, maintenance workers, truck drivers, warehouse employees, therapy aides, food service employees and head custodial engineers while the agreement between the Union and the Employer covers custodial employees. The Kenosha Unified School District contract contains a fair share and dues deduction provision while the Employer's agreement with the Union does not include fair share but does include dues deduction. Kenosha Unified School District agreement contains a grievance and complaint procedure that is very formal with four steps ending in arbitration while the agreement between the Employer and the Union is an informal procedure that does not include arbitration. The Kenosha Unified School District agreement provides that Easter Monday is a work day while the agreement between the Union and the Employer provides that Easter Monday is a day off with pay.

The vacation benefits of the Kenosha Unified School District are equal to or better than those provided by the Employer to this bargaining unit. Employees of the Kenosha Unified School District receiving workers compensation checks as a result of an injury receive all the benefits of the collective bargaining agreement with no loss of sick leave for twelve months if the employee reimburses the school district for the amount received under workers compensation. The Employer is required to pay an employee receiving workers compensation as a result of an injury his regular pay less the amount of workers compensation received and the employee is charged with one-fourth day of sick leave for each day reimbursed. The Kenosha Unified School District agreement provides a car allowance of 15 cents per mile while the Employer is required to pay 17 cents per mile. Kenosha Unified School gives employees one day off with pay for a custodian's picnic while the Employer gives four hours off with pay. During the 1977-1978 school year the Kenosha Unified School District had one more step in the salary schedule but was similar in all other respects. During the 1978-1979 school year the Kenosha Unified School District and the Employer had similar salary schedules but the Employer paid two cents an hour more at each step. During 1979-1980 that two cents an hour differential continued to exist. The 1980-1981 salary schedule agreed upon by the Employer and the Union is similar to that of the Kenosha Unified School District but it pays four or five cents more at each step. The same differential exists in the agreed upon 1981-1982 salary schedules for the Employer and the Kenosha Unified School District. The Kenosha Unified School District has a number of different classifications that include license requirements. Only the mechanic and head custodian employed by the Employer are required to have first class engineer licenses. If the Kenosha Unified School District salary schedule was imposed upon the custodial employees of the Employer during 1980-1981 the total increases paid to them would total \$27,960.00 which would be an increase of 8.1 per cent. The agreed upon salary schedule between the Employer and the Union provides those employees with increases totaling \$30,175.00 which is 8.8 per cent and amounts to \$2,215.00 more.

Based on the existing personnel the proposal to pay out accumulated sick leave at age 65 would not cost the Employer anything during the 1980-1981 school year or the 1981-1982 school year. The Employer projects salary increases of not less than 7.5 per cent for each school year after the 1981-1982 school year. Based on that increase the Employer projects that the Union's proposal for retirement pay out at age 65 would cost it \$3,312.00 during the 1982-1983 school year, \$21,274.00 during the 1983-1984 school year, \$4,450.00 during the 1984-1985 school year and \$14,377.00 during the 1985-1986 school year. Ten of the twenty-six members of the bargaining unit will be eligible for retirement in the next five years. The Employer has 295 positions in its three collective bargaining units and it speculates that if the benefits sought by the Union were extended to all of those employees the fiscal impact on it would be overwhelming. The Employer now provides dental to all of its full time employees except the custodial employees.

Over the years there have always been some differences between the collective bargaining agreements between the Employer and the Union and the Kenosha Unified School District and the Union. The 1971-1973 agreements had differences in the recognition provision. The Kenosha Unified School District provided a dues check off to its custodial employees. The Union sought it from the Employer but it was rejected and never was included in the agreement. At that time the Kenosha Unified School District had the four step grievance procedure with arbitration and the Employer had an informal procedure with no arbitration. There are differences in the amount of vacation allowed for the years of service and the Kenosha Unified School District had a higher maximum. The Kenosha Unified School Service gave its employees funeral leave and there was a difference in the number of days of sick leave and the way it could be used. There was also a difference in the maximum accumulation between the Kenosha Unified School District and the Employer. The Kenosha Unified School District paid the

full single premium for all employees working more than twenty hours but the Employer did not have the twenty hour limitation because none of its employees worked less than twenty hours.

The agreements between the Kenosha Unified School District and the Union and the Employer and the Union for the period from 1973 to 1975 continued the differences in the recognition clause. The Kenosha Unified School District agreement included a fair share provision and the Employer did not although it was sought by the Union during negotiations. The same differences in the grievance procedure existed as did the vacation benefits. The Kenosha Unified School District increased the maximum vacation benefits while those of the Employer remained the same. The difference in sick leave language continued to exist but the Employer agreed to increase the number of days of sick leave that could be accumulated so that it was the same as that of the Kenosha Unified School District.

The 1975-1978 collective bargaining agreements between the Kenosha Unified School District and the Union and the Employer and the Union continued the differences in the recognition clause. The Kenosha Unified School District agreement continued to provide fair share for employees but the Employer would not grant it although the Union sought it during negotiations. The Employer obtained a stronger management rights provision in its agreement that year while the Kenosha Unified School District was unsuccessful in getting such a provision in its agreement with the Union. The same differences in grievance procedure continued to exist and the maximum vacations that employees could obtain were different. The Kenosha Unified School District agreement provided for three days funeral leave while the Employer's agreement with the Union provided five days funeral leave. The Kenosha Unified School District agreement restricted medical insurance benefits to those employees who worked at least twenty hours a week while there was no such limitation in the agreement between the Employer and the Union because the Employer had no custodial employees working less than twenty hours per week.

Grievance procedures in the two agreements have remained the same since 1971. The Employer only had ten or twelve people in the bargaining unit while the Kenosha Unified School District had a much larger number of employees. The Union had a 100 per cent membership of the employees in the Employer's bargaining unit and its need for fair share provision was substantially less than that of the Kenosha Unified School District.

The primary thrust of the Union was that all five other governmental Employers in Kenosha County provided similar, equivalent or superior coverage to that being sought by the Union. It cites the fact that the University of Wisconsin - Parkside employees accumulated and unused sick leave is converted at its current value and credited to a retired or deceased employee to be used to provide monthly health insurance premiums to the employee or his survivors. It argues that this provision is superior to that sought by the Union. The Union points out that the Kenosha County contract with this same Union and other employee groups do not provide for sick leave. However, it provides for compensated absences and for five "casual days" per year which an employee may use in his or her discretion and if they are not used the employee is paid for them at the daily at the end of the calendar year. It contends that this provision is superior to that sought by the Union. The custodial employees of the City of Kenosha receive 50 percent of their accumulated sick leave pay upon retirement and that is similar to the benefit sought by the Union. Kenosha Unified School District provides its custodial employees who are represented by the Union with the very same benefit that is being sought by the Union in this proceeding. Maintenance employees of the Kenosha Library have a similar provision to that being sought by the Union, except that retirement or death is not required as long as the employee has ten or more years of service. It contends that this is a superior benefit to that sought by the Union. The Union argues that the five

governmental employees in the Kenosha area are the most comparable Employers and the fact that each of them provides a similar benefit to the one sought by the Union is significant. The Union suggests that the Employer will reap a special benefit from the addition of its proposal to the collective bargaining agreement. Employees with many years of service and nearing retirement age will be motivated to attend work regularly in order to collect the monetary benefit resulting from accumulated sick leave.

The Employer urges the Arbitrator to construe geographical comparability in a broad manner. It takes the position that because educational institutions have a different mission than other public employers, educational institutions should make up the comparable group to which the Employer should be compared. It suggests that the Arbitrator should only use employee units with a focus of bargaining that is directed towards custodial maintenance employees as comparables. It contends that custodial employees who are a minority element in a collective bargaining unit reap the benefits bargained for positions of greater skill. It suggests that homogeneous units of custodians and maintenance personnel should be considered in making comparisons. Since the Employer consists of both urban and rural areas, it urges that comparable employers should include both urban and rural elements. It contends that the mission of an employer is a factor in determining comparability and should be considered by the arbitrator. It asserts that the thrust of bargaining within the homogeneous bargaining units of custodial and maintenance personnel in educational institutions receives the focus of custodians and maintenance employees as majority members of the bargaining unit. It contends that such units are inherently different in makeup from those of other governmental bargaining units where custodial and maintenance employees are minority members.

The Employer takes the position that the best area of comparability lies with other vocational, technical and adult education districts in the state. It points out that another arbitrator has identified Waukesha, Fox Valley, Northeast, Blackhawk and Moraine Park as Vocational, Technical and Adult Education Districts more comparable to the Employer than any other of the districts. The second area of comparability advocated by the Employer lies with those educational institutions that lie within the borders of the Employer and are located in both rural and urban areas. The Employer suggests that the county governments of Walworth County, Racine County and Kenosha County are not comparable to the Employer because their custodial and maintenance personnel are included in units consisting of employees who are not engaged in custodial, maintenance and food services and the focus of bargaining is directed at a much larger group.

The Employer argues that the University of Wisconsin - Parkside is not a comparable because the sick leave benefit is totally different from the one sought by the Union and it was not achieved through collective bargaining. It takes the position that Kenosha County is not comparable because the benefit that it provides has nothing to do with the cash pay out for unused sick leave at retirement, but pays employees for casual days not used at the end of each calendar year. Conceding that the City of Kenosha provides a similar benefit to the one sought by the Union, the Employer suggests that it is not a comparable because it has only four custodial employees. It suggests that the Kenosha Library is not similar to the Employer because it has a different mission. The Employer argues that the Kenosha Unified School System is the only one of the five examples used by the Union that contains all of the elements of comparability. The Kenosha Unified School System has education as its mission and it has a basically homogeneous employee group of custodians and maintenance personnel who perform similar services comparable to the custodial employees of the Employer. The Employer asserts that the Union's position is weak because none of its comparables include educational Employers from Racine or Walworth County.

The Employer points out that none of the other employee groups of the Employer receive the benefit sought by the Union, and the Arbitrator should not

depart from the pattern of fringe benefits received by the Employer's other bargaining units unless comparable employees in comparable communities are receiving substantially better benefits. It points out that to do this would provide inequity arguments for bargaining in other units and could result in boot strapping and leap frogging. It also argues that the 25 employees represented by the Union should not be setting the pattern for the remaining 270 employees of the Employer.

The Employer contends that seven of the nine public educational employers located within the geographical boundaries of the Employer do not provide a cash pay out for accumulated sick leave upon death or retirement of the employees. University of Wisconsin - Parkside permits the use of accumulated sick leave to be used to pay the cost of monthly health insurance premiums after retirement but only the Burlington Area School District and Kenosha Unified School District provide for a pay out at retirement or death. It points out that while the Kenosha Unified School District pays the exact benefits sought by the Union the Burlington School District pays one-fourth of the daily rate of pay based on the second step of the salary schedule and is less expensive. The Employer also contends that the Kenosha Unified School District employees received the benefit as a result of an arbitration award and not through collective bargaining. The benefit was one of several items in the Union's last offer and the Arbitrator selected the Union's total proposal as the one with the most merit. The Employer points out that thirteen of the fifteen Wisconsin Vocational, Technical and Adult Education Districts which hire custodial and maintenance personnel do not provide a cash pay out for accumulated sick leave upon death or retirement of the employees. The two districts which do provide the benefit are Milwaukee and Waukesha and their benefits are less expensive than the one proposed by the Union. The Employer argues that ten of the twenty-five bargaining unit members would be 65 years of age within the next five years and it projects the possible total cost under this projection to be more than \$43,000.00 for the five year period. It contends that these dollars would be spent as a one time pay out which would not increase the productivity of the employees since they would be retired when they receive it. The Employer points out that its custodial employees receive a higher rate of pay than the custodial employees of the Kenosha Unified School District and coupling the pay out benefits proposed by the Union would place a greater burden on the Employer than the one that an arbitrator placed on the Kenosha Unified School District. The Employer suggests that the arbitration process should not be the device for pattern setting or initiating changes in basic working conditions unless the conditions at issue are unfair or unreasonable or contrary to accepted standards in the industry. It is the position of the Employer that the evidence does not support a compelling need for providing its custodial employees with the benefit.

It is the Employer's position that the bargaining history of the parties should not be considered by the Arbitrator in matters of interest arbitration. To do so would create a reluctance on the part of the parties to make package settlement offers during bargaining because they might be a basis for an adverse decision by an interest arbitrator. While contending that bargaining history should not enter into the case, the Employer does point out that the history of bargaining between it and the Union and the Kenosha Unified School District and the Union indicates that there has always been a number of differences between the two collective bargaining agreements.

In making his decision the Arbitrator must give weight to the lawful authority of the Municipal Employer, stipulations of the parties, the interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement, comparison of wages, hours and conditions of employment of the Municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in

private employment in the same community and in comparable communities, the average consumer prices for goods and services, the overall compensation presently received by the Municipal employees including all fringe benefits, changes occurring during the pendency of the arbitration proceedings and such other factors which are normally or traditionally taken into consideration in determining wages, hours and conditions of employment. The lawful authority of the Municipal Employer was not at issue in these proceedings nor were there any stipulations of the parties that affected it. The Arbitrator considered the interests and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed settlement and has given weight to the comparison of wages, hours and conditions of employment and the consumer price index as required by the statute, the overall compensation presently received by the Municipal employees including fringe benefits has been given consideration along with changes in any of the circumstances during the proceeding. All factors normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment have been considered in these proceedings where appropriate.

DISCUSSION

Since the beginning of collective bargaining for Municipal employees in the State of Wisconsin, there has been a close relationship between the salaries and benefits received by the custodial employees of the Employer and the custodial employees employed by Kenosha Unified School District. The same Union represents the employees of both employers and the primary thrust in wages and other benefits has been the same in the negotiations with each employer. On some occasions the Employer has followed a practice of waiting until the Kenosha Unified School District had reached agreement with the Union and then the Employer would agree to similar benefits with the Union for its custodial employees. While the Kenosha Unified School District did not agree to give its custodial employees a cash pay out of accumulated sick leave the Union obtained the benefit for those employees through arbitration. Now all five public Employers in Kenosha provide some sort of pay out of accumulated sick leave to their employees. The Employer contends that those five Employers do not constitute the most comparable group because four of them have a different mission than the Employer, only one of them is an educational institution, none of them is a vocational, technical and adult education institution and the geographical area covered by the employers includes only Kenosha County while the Employer has employees in Racine County and Walworth County. It points out that not all of them constitute a rural-urban mix as does the Employer. Certainly the five Employers utilized by the Union as its comparable do not all have a rural-urban mix. However, at least Kenosha County does. There is no question that only one of them has education as its primary mission and none of them is a Vocational, Technical and Adult Education institution. However, all of the employers in the Unions comparable group are in the geographical area where most of the Employer's employees are located and they all employ custodial employees. Some of them include custodial employees in bargaining units that include employees from other classifications and some of them only employ a few custodial employees. The fact that they are from the geographical area in which most of the Employer's custodial employees are located and that they perform similar duties certainly makes them comparable. While they are not 100 percent comparable in every respect, there are similarities about them that justify their consideration as comparables. The Employer suggests that the best area of comparability lies with other Vocational, Technical and Adult Education Districts throughout the State of Wisconsin. It points out that another arbitrator has identified Waukesha, Fox Valley, Northeast, Blackhawk and Moraine Park as districts more comparable to the Employer than other districts in the state. That same arbitrator found Waukesha the most comparable district to the Employer and Waukesha does offer a pay out of accumulated sick leave, although its system is different and probably less expensive than that sought by the Union. The Employer urges the Arbitrator to consider post high school and K-12 educational

institutions lying within the borders of the Employer as comparables. The comparable group advocated by the Union does contain Kenosha Unified School System and University of Wisconsin - Parkside and both of those institutions offer a benefit that pays an employee part of his accumulated sick leave at retirement or death. The benefits provided by the University of Wisconsin - Parkside is not the same as that sought by the Union but it does result in a benefit for employees based upon accumulated sick leave at the time of retirement or death. None of the other educational institutions located within the geographic area of the Employer are located in urban areas except for the Racine School District. Racine does not offer a comparable benefit but the Burlington Area School District offers a benefit that results in the payment to employees at retirement based on accumulated sick leave.

The best argument that the Employer makes against the Union's proposal is that it does not pay any of its other employees accumulated sick leave upon retirement or death. The arbitrator agrees that arbitrators should ordinarily not depart from the pattern of fringe benefits provided to other units of an Employer unless it is clearly shown that the unit suffers in comparison or there is some compelling reason for it. It should be pointed out that the Employer does pay dental insurance for all of its other full time employees but it does not pay it for the custodial employees. While it is quite possible that the Employer would have been willing to provide dental benefits to the custodial employees if they had given up their quest for a pay out of accumulated sick leave, the fact is that those employees did not receive the dental insurance. Obviously they were willing to forego the dental insurance because they felt the pay out of accumulated sick leave was the more desirable benefit from their point of view. The Arbitrator is of the opinion that there should be some equity between the benefits received by all of the employees. This does not necessarily mean that all of them have to receive the same benefits. Here the Union was willing to trade off the dental insurance for a pay out of accumulated sick leave. There is a substantial savings to the Employer in not having to provide the custodial employees with dental insurance and the immediate cost of the pay out of accumulated sick leave is practically nothing. While there is a potential of a substantial cost for pay out for accumulated sick leave in the future, the cost of dental insurance begins immediately and extends to every employee. The Arbitrator understands that giving the accumulated sick leave benefit to the custodial employees might result in pressure from other larger units for the same benefits and they will use this small unit as precedent for comparison. The Employer does have a valid response in such a situation by pointing out that its other employees do receive the dental insurance while the custodial employees do not. It is quite possible that had the Employer included dental insurance in its last offer as an alternative to the Union's proposal of a pay out of accumulated sick leave at retirement, the Arbitrator might very well have selected the Employer's last offer because it would have maintained equity and internal comparability.

The Employer's argument that the Union's offer would be a cost burden to it has some validity. However the immediate burden is minimal. The Employer has used projections that show substantial pay outs in the future but these projections are based on the assumption that all of the employees will accrue the maximum amount of sick leave. That is not the situation now nor is it ever likely to be. Sick leave is provided to employees to cover periods of illness and employees do become ill for varying periods. It is reasonable to expect that not all employees will accumulate the maximum amount of sick leave and receive the maximum amount of pay out at retirement. The Employer would have a lower cost if it pays out employees one-half of their accumulated sick leave at retirement as opposed to paying all of the employee's sick leave because of illness. The primary justification for the pay out of accumulated sick leave is to make it worth while for employees to report to work and not claim sick leave unless it is absolutely necessary. The Employer benefits by having the employee

there to do the work for which he is hired. Even though it would have to pay out cash for part of the accumulated sick leave at retirement, it would amount to less money than the full cost of the sick leave if the employee had used it because of illness.

The Employer contends that the Union has not demonstrated a compelling need for the inclusion of its proposal in the agreement. The Arbitrator would concede that it is quite possible for the Union to live without this benefit. However he is of the opinion that the custodial employees merit a benefit to offset the dental insurance benefit given to the other employees in order to have equity. That is sufficient reason to justify the new benefit.

The Employer has lawful authority to agree to such a benefit and it does not adversely effect the interest and welfare of the public. There is no question that the Employer has a financial ability to meet the costs of this benefit in the ensuing contract year. At least one other group of custodial employees employed by municipal employers in the Kenosha area receive this exact same benefit and all of the other custodial employees employed by municipal employers in the Kenosha area receive variations of the benefit. While none of the Employer's other full time employees receive this benefit, they all receive dental insurance and the custodial employees do not. The overall compensation received by the custodial employees would be inequitable as compared to the Employer's other full time employees if they did not get a benefit to compensate for the fact that they do not receive the dental insurance. The pay out of accumulated sick leave at retirement or death merely restores equity between the Employer's employees and retains the traditional relationship between the custodial employees employed by the Kenosha Unified School District and those employed by the Employer. It provides the Employer's custodial employees a benefit comparable to that received by all other custodial employees of Municipal Employers in the Kenosha area. It provides a benefit to the Employer's custodial employees similar to that provided by the most comparable Vocational, Technical and Adult Educational District in the State of Wisconsin. The benefit is not a unique one in municipal employment and it is not unique in the Kenosha area. A similar benefit is provided to all other custodial employees of educational institutions and public employers in the Kenosha area. Not all of the educational institutions in the geographical area served by the Employer provide a similar benefit to their custodial employees but all of those that do not are located in nonurban areas. At least one of the educational institutions located in a nonurban area does provide a similar type of benefit.

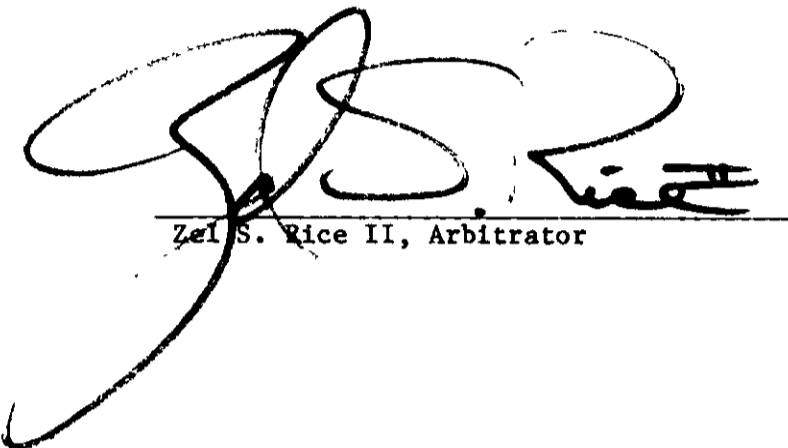
The Arbitrator is reluctant to provide employees a new benefit that the Employer does not provide to its other employees. He is concerned about maintaining some equity in the total compensation between the custodial employees and the Employer as compared to the total compensation provided to other employees of the Employer. An inequity would exist if the custodial employees did not receive the pay out of sick leave at retirement and all of the other full time employees of the Employer continued to receive dental insurance. Awarding the custodial employees the pay out of accumulated sick leave at retirement will restore equity between them and the Employer's other fulltime employees and retain the relationship between benefits received by the Employer's custodial employees and the benefits received by the custodial employees of the Kenosha Unified School System who are represented by the same Union. It fits them neatly into the pattern of benefits provided to all other custodial employees of public employers in the Kenosha area.

FINDINGS AND AWARD

After full consideration of the criteria listed in the statute and after careful and extensive examination of the exhibits and arguments of the parties the Arbitrator finds that the Union's final offer as amended at the conclusion

of the mediation proceedings is preferable to that of the Employer and orders that the Union's proposal to provide employees upon retirement with a cash payment of one-half of their accumulated sick leave is preferable to that of the Employer and orders that the Union's proposal be incorporated into an agreement containing the other items to which the parties have agreed.

Dated at Sparta, Wisconsin, this 27th day of May, 1981.



Zel S. Rice II, Arbitrator

ADDENDUM A

Name of Case: Gateway Technical Institute
Case XVIII
No 26155
Med-Arb - 706

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

22 Sept 80
(Date)

[Signature]
(Representative)

On Behalf of: Service Employees S E I U, Local No 168, AFL-CIO

1. 2 year contract
2. 9 1/2 % increase in first contract year; in second contract year 9 1/2 % increase (wages)
3. .

Sept 22-80

~~0000~~ Any member of the bargaining unit who retires from the Board's employment under the provisions of the Wisconsin Retirement Act or the designated beneficiary of any working member who dies shall receive an amount calculated by multiplying the employee's accumulated sick leave by his final daily rate of pay and dividing the sum thereof by two. A retiring employee may, at his option, decline immediate payment of this sum upon retirement and instead have it set aside for use in the purchase of group health insurance coverage; provided, however, that should any employee exercising this option die before the entire amount due him is so utilized, any remaining balance due him shall be paid to his designated beneficiary.

ADDENDUM "B"

Name of Case: Gateway Technical Institute

Case XVIII

No 26155

Med-ARB-706

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

22 Sept 80

(Date)

Ernest P. J. [Signature]
(Representative)

On Behalf of: Gateway Vocational, Technical and Adult Education

District Board

Final offer made 3:20 pm, 9-22-80

Wages - 1980-1981 and 1981-82 see attached

AGREEMENT as per stipulation 4-9-80

ARTICLE X(3) as per stipulation 4-15-80

ARTICLE XIX (8) as per stipulation 4-15-80

Remaining language as per (7-1-78 to 6-30-80)
agreement

Proposal - Final Offer

3:35 pm

9-22-80

1. 2 year contract
2. 8.8% increase to salary schedule
for 1980-81
9.0% increase to salary schedule
for 1981-82

Kenneth Neinger